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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 161017970-6999-02]

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Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2017-2018 Summer Flounder Specifications and Announcement of 2017 Summer Flounder and Black Sea Bass Commercial Accountability Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: In this rule, NMFS issues revised final 2017 and 2018 specifications for the summer flounder fishery, which include commercial and recreational catch limits and prohibit federally permitted commercial fishing vessels from landing summer flounder in Delaware in 2017 due to continued quota repayment from previous years' overages. NMFS also announces a black sea bass commercial accountability measure that revises the 2017 annual catch target and commercial quota to account for a catch overage in 2015. These actions are necessary to comply with regulations implementing the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, and to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act. The intent of this action is to establish harvest levels and other management measures based on updated scientific information to ensure that summer flounder

are not overfished or subject to overfishing in 2017 and 2018, and to enact the catch limit adjustments that are required by the fishery management plan.

DATES: Effective January 1, 2017, through December 31, 2018.

ADDRESSES: Copies of the specifications document, consisting of a supplemental environmental assessment (SEA), Initial Regulatory Flexibility Analysis (IRFA), other supporting documents used by the Mid-Atlantic Fishery Management Council and its committees, and the original environmental assessment for the 2016-2018 summer flounder, scup, and black sea bass specifications are available from Dr. Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The specifications document is also accessible via the Internet at <http://www.greateratlantic.fisheries.noaa.gov>. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from John K. Bullard, Regional Administrator, Greater Atlantic Region, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930-2298.

FOR FURTHER INFORMATION CONTACT: Emily Gilbert, Fishery Policy Analyst, (978) 281-9244.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission cooperatively manage the summer flounder, scup, and black sea bass fisheries. The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and its

implementing regulations outline the Council's process for establishing specifications. Specifications in these fisheries include various catch and landing subdivisions, such as the commercial and recreational sector annual catch limits (ACLs), annual catch targets (ACTs), and sector-specific landing limits (*i.e.*, the commercial fishery quota and recreational harvest limit). Annual specifications may be established for three-year periods, and, in interim years, specifications are reviewed by the Council to ensure previously established multi-year specifications remain appropriate. The FMP and its implementing regulations also outline the Council's process for establishing specifications. Requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), including the 10 national standards, also apply to specifications.

The most recent specifications for summer flounder, scup, and black sea bass fisheries were established in a December 28, 2015, final rule (80 FR 80689) that set catch limits for all three species for 2016 through 2018. At that time, the 2015 summer flounder stock assessment update indicated that the stock size was declining and that overfishing was occurring in 2014 (see the November 9, 2015, proposed rule, 80 FR 69179, and also the November 15, 2016, proposed rule for this action, 81 FR 80038). The Council and NMFS expected these specifications would end overfishing on summer flounder and allow for stock growth. The background for establishing the 2016-2018 specifications, including the results of the 2015 assessment update, are outlined in the proposed and final rules for the December 2015 specifications rulemaking, and are not repeated here. When recommending those specifications, the Council and its Scientific and Statistical Committee (SSC) requested a stock assessment update in July 2016 to determine if the previously recommended acceptable biological catches

(ABCs) and subsequent catch limits remain appropriate for 2017 and 2018. The Council and its SSC reviewed that assessment update when it became available in July 2016.

As detailed in the proposed rule (81 FR 80038, November 15, 2016), the 2016 assessment update indicates that overfishing of the summer flounder stock continued through 2015 and the stock has continued its decline. As a result, catch limits need to be lowered to end overfishing and minimize the risk that the stock will become overfished. The assessment update noted that the consistent pattern in both underestimation of fishing mortality and overestimation of spawning stock biomass and recruitment is continuing, even though catches have not substantially exceeded ABC levels. In retrospect, these over and underestimates provided overly optimistic outlooks for the stock and resulted in recommended catch levels that have allowed overfishing to continue, even though catches have not frequently or excessively exceeded catch limits. Stated simply, the information from the latest assessment update made clear that catch advice, including the initial 2016-2018 catch limits, has been set too high. Based on this information regarding the status of the summer flounder stock, as updated to include data from 2015, this final rule revises the previously established summer flounder specifications for the 2017 and 2018 fishing years. Another assessment update will be available next summer, and notice will be provided in the **Federal Register** on whether the revised 2018 specifications will remain in place or be further updated based on any new information.

NMFS will establish the 2017 recreational management measures (*i.e.*, minimum fish size, possession limits, and fishing seasons) for summer flounder, scup, and black sea bass by publishing proposed and final rules in the **Federal Register** in late winter/early spring 2017.

Revised 2017-2018 Summer Flounder Specifications

This rule implements the Council's revised ABC recommendations and the commercial

and recreational catch limits for fishing years 2017 and 2018 (Table 1), as outlined in the proposed rule.

As discussed in the proposed rule, the revised 2017 ABC and associated commercial and recreational catch limits are approximately 30 percent lower than those previously established for 2017 ABC. The revised 2018 ABC and associated catch limits are 16 percent lower than those previously established for 2018. These ABC revisions follow the Council's standard risk policy based on the recalculated overfishing limits (OFLs) recommended by the assessment update.

This action makes no other changes to the Federal commercial summer flounder management measures.

Table 1. Summary of the Revised 2017-2018 Summer Flounder Specifications

	2016 (current)		2017		2018	
	million lb	mt	million lb	mt	million lb	mt
OFL	18.06	8,194	16.76	7,600	18.69	8,476
ABC	16.26	7,375	11.30	5,125	13.23	5,999
ABC Landings Portion	13.54	6,142	9.43	4,278	11.05	5,010
ABC Discards Portion	2.72	1,233	1.87	847	2.18	989
Commercial ACL	9.43	4,275	6.57	2,982	7.70	3,491
Commercial ACT	9.43	4,275	6.57	2,982	7.70	3,491
Projected Commercial Discards	1.30	590	0.92	415	1.07	485
Commercial Quota	8.12	3,685	5.66	2,567	6.63	3,006
Recreational ACL	6.84	3,100	4.72	2,143	5.53	2,508
Recreational ACT	6.84	3,100	4.72	2,143	5.53	2,508
Projected Recreational Discards	1.42	643	0.95	432	1.11	504
Recreational Harvest Limit	5.42	2,457	3.77	1,711	4.42	2,004

Table 2 summarizes the commercial summer flounder quotas for each state. As mentioned in the proposed rule, this final rule announces any necessary commercial state quota overage reductions necessary for fishing year 2017. Table 2 includes percent shares as outlined in 50 CFR 648.102 (c)(1)(i), the resultant 2017 commercial quotas, quota overages (as needed), and the final adjusted 2017 commercial quotas. The 2016 quota overage is determined by comparing landings for January through October 2016, plus any 2015 landings overage that was

not previously addressed in the 2016-2018 specifications, for each state. For Delaware, this includes continued repayment of overharvest from previous years. Table 3 presents the initial 2018 quota by state. The 2018 state quota allocations are preliminary and are subject to change if there are overages of states' quotas carried over from a previous fishing year. Notice of any commercial quota adjustments to account for overages will be published in the **Federal Register** prior to the start of the 2018 fishing year.

Table 2. Final State-by-State Commercial Summer Flounder Quotas for 2017

	FMP Percent Share	2017 Initial Quota		Overages through October 31, 2016		Adjusted 2017 Quota, less overages *	
State		lb	kg	lb	kg	lb	kg
Maine	0.04756	2,692	1,221	0	0	2,692	1,221
New Hampshire	0.00046	26	12	0	0	26	12
Massachusetts	6.82046	385,988	175,081	0	0	385,988	175,081
Rhode Island	15.68298	887,542	402,582	0	0	887,542	402,582
Connecticut	2.25708	127,734	57,939	0	0	127,734	57,939
New York	7.64699	432,764	196,298	0	0	432,764	196,298
New Jersey	16.72499	946,512	429,331	0	0	946,512	429,330
Delaware	0.01779	1,007	457	-49,365	-22,392	-48,358	-21,935
Maryland	2.0391	115,398	52,344	0	0	115,398	52,344
Virginia	21.31676	1,206,372	547,201	0	0	1,206,372	547,201
North Carolina	27.44584	1,553,233	704,535	0	0	1,553,233	704,535
Total	100	5,659,266	2,567,000	0	0	5,658,260	2,566,544
<i>Notes: Kilograms are as converted from pounds and may not necessarily add due to rounding. Total quota is the sum for all states with an allocation. A state with a negative number has a 2017 allocation of zero (0). Total adjusted 2017 quota, less overages, does not include negative allocations (i.e., Delaware's overage).</i>							

Table 3. 2018 Initial Summer Flounder State Commercial Quotas

	FMP Percent Share	2018 Quota	
State		lb	kg
Maine	0.04756	3,152	1,430
New Hampshire	0.00046	30	14
Massachusetts	6.82046	451,998	205,023
Rhode Island	15.68298	1,039,326	471,430
Connecticut	2.25708	149,579	67,848
New York	7.64699	506,773	229,868
New Jersey	16.72499	1,108,381	502,753
Delaware	0.01779	1,179	535
Maryland	2.0391	135,133	61,295
Virginia	21.31676	1,412,682	640,782
North Carolina	27.44584	1,818,862	825,022
Total	100	6,627,096	3,006,000

Delaware Summer Flounder Closure

Table 2 shows that, for Delaware, the amount of overharvest from previous years is greater than the amount of commercial quota allocated to Delaware for 2017. As a result, there is no quota available for 2017 in Delaware. The regulations at 50 CFR 648.4(b) provide that Federal permit holders, as a condition of their permit, must not land summer flounder in any state that the NMFS Greater Atlantic Region Administrator has determined no longer has commercial quota available for harvest. Therefore, landings of summer flounder in Delaware by vessels holding commercial Federal summer flounder permits are prohibited for the 2017 calendar year, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are advised that they may not purchase summer flounder from federally permitted vessels that land in Delaware for the 2017 calendar year, unless additional quota becomes available through a transfer, as mentioned above.

Accountability Measure Quota Adjustment Announcements

Black Sea Bass

Each year, NMFS publishes a notice, either in combination with the specifications final rule or separately, to inform the public and the states of any commercial summer flounder, scup, or black sea bass overages that are deducted from a fishing year's allocations for the start of the fishing year. This final rule is announcing an 2017 accountability measure for the black sea bass commercial fishery, as required by the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan and in compliance with the regulations at 50 CFR 648.143.

In 2015, due to an overage of the commercial quota and higher-than-anticipated discards, the commercial fishery exceeded its ACL. The fishery exceeded its 2015 commercial quota by 3.8 percent. However, estimated commercial dead discards of 523.3 mt were much higher than projected (166 mt), accounting for 44.4 percent of the total catch for 2015. We currently estimate that 100 percent of black sea bass caught in trawls and gillnets die post release, with that estimate lowered to 15 percent for black sea bass caught in commercial hook and line and commercial fish pots. In the event that the commercial ACL has been exceeded and the overage cannot be accommodated through the landings-based accountability measure, the regulations at § 648.143(b) require that the exact amount of the overage, in pounds, be deducted from a subsequent single year's commercial ACL. The 2017 commercial ACT is reduced by 849,363 lb (385 mt) from 3,148,200 lb (1,428 mt) to 2,298,837 lb (1,043 mt). After estimated commercial discards are removed (436,515 lb; 198 mt), the 2017 commercial quota is 1,862,322 lb (845 mt).

The results of a new black sea bass benchmark stock assessment has undergone peer review and a final report will be available for review by the SSC and the Council later this

winter. Should the information provided by this assessment indicate a need to revise the 2017 black sea bass specifications, we will work with the Council to publish a mid-year adjustment in the **Federal Register**. These accountability measures will be reevaluated based on any information the assessment may provide and any updated 2015 catch information, if available, would be incorporated at that time.

The 2017 commercial and recreational black sea bass catch limits are outlined in Table 4. The recreational catch limits are unchanged from the December 2015 rulemaking.

Table 4. Revised Black Sea Bass 2017 Specifications following Accountability Measure Adjustments

	2017	
	million lb	mt
Commercial ACL	3.15	1,428
Commercial ACT ¹	2.30	1,043
Projected Commercial Discards	0.44	198
Commercial Quota ¹	1.86	845
Recreational ACL	3.52	1,597
Recreational ACT	3.52	1,597
Projected Recreational Discards	0.70	317
Recreational Harvest Limit	2.82	1,280

¹ Incorporates reductions for 2015 overages

Scup

No commercial scup quota overage is applicable to 2017; therefore, no adjustments to the previously implemented 2017 quota or possession limits are necessary. The 2017 catch limits are repeated in this preamble for ease of reference. Notification will be published in the **Federal Register** prior to the start of the 2018 fishing year of the previously established scup quotas. This notice will include any necessary commercial quota revision or ACL accountability measure should the 2016 scup quota be exceeded.

The 2017 commercial and recreational catch limits established in the December 2015 rulemaking are outlined in Table 5.

Table 5. Scup 2017 Specifications

	million lb	mt
Commercial Annual Catch Limit and Annual Catch Target	22.15	10,047
Recreational Annual Catch Limit and Annual Catch Target	6.25	2,834
Commercial Quota	18.38	8,337
Recreational Harvest Limit	5.50	2,495

The 2017 scup commercial quota is divided into three commercial fishery quota periods, as outlined in Table 6.

Table 6. Commercial Scup Quota Allocations for 2017 by Quota Period

		2017 Initial Quota	
Quota Period	Percent Share	lb	mt
Winter I	45.11	8,291,190	3,761
Summer	38.95	7,158,986	3,247
Winter II	15.94	2,929,762	1,329
Total	100.0	18,379,939	8,337
<i>Note: Metric tons are as converted from pounds and may not necessarily total due to rounding.</i>			

The quota period possession limits are unchanged from the December 2015 rulemaking.

Comments and Responses

On November 15, 2016, NMFS published the proposed summer flounder specifications for public notice and comment. NMFS received 1,231 comments from individuals, as well as comment letters from the Recreational Fisheries Alliance (RFA), the Jersey Coast Anglers Association, On The Water L.L.C., and the Marine Trades Association of New Jersey. Only the

comments relating to the proposed 2017 and 2018 summer flounder specifications, including the analyses used to support them, are responded to below.

We received numerous comment letters that mentioned summer flounder recreational management measures. The Council and Commission are currently reviewing necessary 2017 recreational management measures for summer flounder, scup, and black sea bass. Rulemaking for those decisions will occur in a separate action in early spring 2017 and the public can comment on the proposed recreational management recommendations at that time.

Many comments relevant to this action used similar language or themes; therefore, the significant issues and concerns have been summarized and responded to here. No changes to the proposed specifications were made as a result of these comments. The specifications are based on the Council's recommendation which, in turn, was based on the SSC's advice and application of the Council Risk Policy to the best available scientific information.

Comment 1: Many commenters stated that quota cuts are unnecessary because there is an abundance of summer flounder. Some stated they do not believe in the results from the various fishery independent surveys.

Response: NMFS disagrees. The prevailing information from the assessment and multiple fish surveys indicate a continual decline in abundance over the past few years. The Northeast Fisheries Science Center (NESFC) performed a summer flounder stock assessment update in June 2016. This update used the peer-reviewed model developed and accepted during the most recent benchmark assessment completed and reviewed during the 57th Stock Assessment Workshop and Stock Assessment Review Committee (SAW/SARC 57). The

Council's SSC used the results of the assessment update in developing its 2017 and 2018 ABC recommendations.

Spawning Stock Biomass (SSB) in the assessment update was estimated to be 36,240 mt, based on information through 2015, the most recent complete year of fishery dependent and independent data. The assessment update indicates that the summer flounder stock, as indicated by SSB, has declined in size each year for the past six years.

An extensive survey data set is used in the summer flounder assessment model. These surveys span both state and Federal waters, are conducted at varying times of the year, and provide information on both young-of-the-year (YOY) and adult summer flounder distribution. Surveys include: Age compositions from the NEFSC winter, spring, and fall, Massachusetts spring and fall; Rhode Island fall and monthly fixed; Connecticut spring and fall; Delaware; New York; New Jersey; Virginia Institute of Marine Science (VIMS) surveys. Aggregate indices of stock abundance from the University of Rhode Island trawl survey and NEFSC larval surveys, and recruitment indices (YOY) from surveys conducted by the states of Massachusetts, Delaware, Maryland, and Virginia are also used in the model calibration.

The Council's SSC noted that a downward trend is evident in the majority of these surveys' stock indices, including recruitment, since 2011. In addition to considering the information on stock abundance, the SSC considered updated information on fishing mortality and recruitment estimates, fishery performance, and risk of depleting the stock to an overfished condition. Based on this evaluation and application of the Council's Risk Policy, the SSC noted a clear need to reduce catch in 2017 and 2018 from levels previously recommended in order to end overfishing and ensure the stock does not become overfished. The Council considered these

recommendations and the SSC's rationale and agreed, recommending the catch levels being implemented by NMFS in this rule.

NMFS acknowledges there is the possibility for potential changes in availability of fish to some surveys and to the fishery as a result of changes in the distribution of the summer flounder population. However, the available information provided by the assessment update deriving biomass estimates from multiple sources indicate the summer flounder stock is, in fact, in decline and in need of further conservation, consistent with the recommendations of the Council and its SSC to end overfishing and to prevent the stock from becoming overfished. Therefore, we are implementing the measures outlined in this rule's preamble.

Comment 2: Many commenters stated that the most recent summer flounder benchmark assessment is outdated and incorrect. While some offered no specifics as to why they believe this to be true, others stated that stock assessment has failed to keep pace with the changes being observed in the stock as it continues to expand and move north and east. Some stated that although summer flounder is one of the best assessed fisheries in the Mid-Atlantic region, significant and rapid changes are being experienced in the summer flounder stock and the frequency of benchmark assessments has not kept pace. As a result, they cannot support any reductions to the summer flounder ABC until a benchmark assessment is conducted.

Response: NMFS agrees that summer flounder is one of the best assessed fisheries in the Mid-Atlantic. Detailed information on the frequency of benchmark, operational, and updates to assessments can be found on the NEFSC web site at: <http://www.nefsc.noaa.gov/saw/>.

The 2017 and 2018 summer flounder specifications are based on an update to the 2013 peer-review accepted benchmark assessment model. That is, updated fishery independent survey

information (see response to Comment 1) and fishery dependent information (commercial and recreational catch) through 2015 were used to re-run the assessment model to provide updated stock advice for the SSC and Council to consider. While a benchmark assessment typically considers new or alternative modeling approaches and stock assumptions, the core fishery data sets—surveys and catch data—are already very expansive for summer flounder.

While it is possible that a benchmark assessment, if developed, may derive a different perception of stock status, NMFS, the Council and its SSC all determined the available information was reliable and appropriate for use, consistent with National Standard 2, to establish the catch limits from which these specifications are derived. Another assessment update is scheduled for 2017, which will provide the opportunity to review the adequacy of the catch limits implemented in this final rule for fishing year 2018.

The next benchmark assessment will be scheduled through the Northeast Region Coordinating Council (NRCC). This group, comprised of senior leaders of both the New England and Mid-Atlantic Councils, the Atlantic States Marine Fisheries Commission, NMFS Greater Atlantic Regional Fisheries Office and the NEFSC, develops an agreed schedule for assessments based on need, available resources, and, importantly, advances in available information. This schedule is reviewed on a biannual basis and updates are considered at those times. There is very little value in developing benchmark assessments if additional information or advances in science have not occurred since the last benchmark was conducted. The NRCC will discuss assessment scheduling in the late spring and fall of 2017.

Comment 3: We received comments from 841 people through a form letter stating that new science from Cornell University will help inform a more accurate stock assessment for

summer flounder. These commenters mentioned that a new benchmark stock assessment is expected in early 2017, which would replace the out-of-date 2013 assessment that is currently used. They stated that because this new information will provide a more accurate indication of the true health of the fishery, NMFS should delay such a drastic and potentially catastrophic reduction until the new stock assessment, that incorporates the science from Cornell, is complete. Other comments alluded more generally to wanting new information incorporated in the stock assessment.

Response: NMFS disagrees and clarifies that the commenters are incorrect regarding a benchmark assessment (see response to Comment 2). There is currently no benchmark stock assessment scheduled for summer flounder in early 2017. Commenters may be confusing this with the black sea bass benchmark assessment that was recently completed and peer-reviewed. The Council's SSC has requested to review another summer flounder assessment update (*i.e.*, adding 2016 survey and fishing data to the existing assessment model) next summer to review the status of the stock and see if adjustments to the 2018 ABC recommendation should be made. In order for such an assessment to produce new results (*e.g.*, revised biological reference points), new scientific information, such as the final results of the Cornell study, is necessary. Once that information is available, the NRCC may schedule an assessment, as described in response to Comment 2 above.

The Council and its SSC, as well as NMFS, are obligated by National Standard 2 of the Magnuson-Stevens Act to make use of the best available scientific information. The current assessment update, incorporating information from the 2015 fishing year, is the best available scientific information. This information informs us that the stock is subject to overfishing, that

projections of fishing mortality have been frequently underestimated while stock and recruitment and biomass projections have been overly optimistic, and that overall the stock is close to an overfished condition. Based on this information, catch reductions are necessary to end overfishing and ensure the stock does not become overfished. If the stock becomes overfished, the Council would be required to establish a formal rebuilding program, as outlined in the Magnuson-Stevens Act.

Comment 4: The Jersey Coast Anglers Association stated that SSB_{msy} (i.e., the stock biomass target) is at too high a level and that the summer flounder fishery would be sustainable even with a much smaller biomass.

Response: NMFS disagrees that the SSB_{msy} biomass target is too high. As previously mentioned, the SSB in the assessment update was estimated to be 36,240 mt, based on information through 2015, the most recent complete year of fishery dependent and independent data. The assessment update indicates that the summer flounder stock, as indicated by SSB, has declined in size each year for the past six years. The update estimated that SSB is at 58 percent of maximum sustainable yield (SSB_{msy}) and only 16 percent above the minimum stock size threshold ($1/2 SSB_{msy}$). If SSB estimates fall below this threshold, the stock is considered overfished and must be put into a formal rebuilding program.

Comment 5: Ten commenters were supportive of the proposed quota cuts. Some noted that they have noticed a decline in summer flounder abundance in the last few years.

Response: NMFS agrees and is implementing the proposed quotas for the reasons outlined in the preamble to this rule.

Comment 6: Numerous commenters, including the RFA, recommended that NMFS approve an ABC of 16.26 million lb (7,375 mt) for both years (*i.e.*, the current 2016 ABC). Others recommended maintaining the previously established ABCs for 2017 and 2018. The RFA commented that NMFS is not bound to the same requirement as the Council to develop ACLs that do not exceed the recommendation of its SSC. The RFA also stated that the Council's risk policy is too precautionary for the summer flounder stock and that it is not in the best interest of the Council or the fishing industry to defer all authority to manage risk to the SSC. The RFA stated that NMFS is able to set 2017 and 2018 summer flounder ABCs that are equal to but not exceeding the OFLs derived in the assessment update.

Response: NMFS disagrees that it would be appropriate for the agency to unilaterally implement ABCs that are higher than those recommended by the Council. Section 302(h)(6) of the Magnuson-Stevens Act provides that a Council may not develop ACLs that exceed the ABC recommendations of its SSC. The statute does not explicitly address whether NMFS may establish catch limits in excess of those recommendations. However, it is unnecessary in this instance for NMFS to resolve this question of statutory interpretation, as NMFS has concluded that the Council and its SSC's recommendations reflect the best available scientific information, and are well-founded and consistent with the requirements of the Magnuson-Stevens Act. NMFS, in reviewing the Council's recommendations, finds that its SSC did appropriately interpret and make use of the available stock assessment information and the Council's recommendation to NMFS was based on the ABC advice from the SSC.

The SSC's meeting report (available from the Mid-Atlantic Council at: <https://goo.gl/8I7OeI>) indicates a thorough and deliberate process to fully address the terms of

reference established for creating ABC advice, including application of the Council's Risk Policy. The SSC received detailed information on the assessment update and was able to ask direct questions to both Council and NEFSC staff that have familiarity and expertise with the summer flounder assessment and fishery management plan. Moreover, the SSC, in compiling its advice to the Council, noted several substantial concerns about the status of the stock in regards to persistent overfishing, likelihood of the stock becoming overfished if catches are not reduced, and the overall poor status of the stock.

Given that there is a very clear record supporting the SSC's ABC derivation process as well as a clear record that the Council used the SSC recommendations appropriately and consistently with National Standard 2 to meet the intent of National Standard 1 to prevent overfishing, NMFS finds it would be wholly inappropriate in this instance to establish catch limits higher than those recommended by the Council and its SSC. Moreover, setting ABC equal to OFL would remove any consideration of scientific and management uncertainty to the summer flounder stock/fishery. The SSC's report and the benchmark assessment model outline several sources of uncertainty for the summer flounder stock assessment. As a result, it would be inappropriate for NMFS to assume there is no need to offset ABC from OFL.

Comment 7: Many mentioned that the summer flounder recreational harvest limit will be reduced up to 40 percent due to estimated declines in the stock and because the recreational sector is estimated to have exceeded its 2016 harvest limit. They recommended that NMFS assume that the recreational sector met, but did not exceed its recreational harvest of 5.42 million lb (2,458 mt) in 2016.

Response: This action will reduce the 2017 recreational harvest limit by approximately 30 percent from the 2016 limit (from 5.42 million lb (2,457 mt) to 3.77 million lb (1,711 mt)). NMFS clarifies that any additional reduction necessary to prevent an overage of the 2017 recreational harvest limit due to estimated 2016 overages will be determined after the end of the 2016 fishing year and announced through rulemaking that will establish the 2017 summer flounder, scup, and black sea bass recreational management measures. Although preliminary Marine Recreational Information Program estimates indicate that 2016 recreational harvest limit overages may necessitate a total reduction closer to 40 percent, this amount is subject to change and may ultimately be greater or less than that amount. As for the suggestion to assume the recreational sector met but did not exceed its recreational harvest limit for 2016, the Council must recommend, and NMFS is required to implement, recreational management measures that will constrain landings to the recreational harvest limit for a given fishing year. If data show that the fishery exceeded its limit in 2016, this informs the Council and NMFS about the extent to which adjustments to recreational management measures are needed to appropriately constrain catch in 2017. The determination of any 2016 overage, and how that will affect 2017 recreational management measures, is outside the scope of this action. A separate notice-and-comment rulemaking for the 2017 recreational summer flounder management measures will be conducted in late winter/early spring of 2017.

Comment 8: The majority of commenters mentioned that these catch limit reductions would be very difficult for the fishing industry, particularly the recreational sector, and coastal communities. Some stated that these cuts are occurring with no consideration to the communities who depend on summer flounder fishing for their livelihoods. Others noted their

concerns that these cuts would likely drive them out of business. Some recreational anglers stated they would no longer fish if these cuts resulted in lower bag limits, higher minimum sizes, or shorter seasons.

Response: NMFS recognizes that these revised summer flounder catch limits, representing nearly a 30-percent decrease from 2016 catch levels, will result in constrained recreational and commercial fisheries. The Council's SEA and Regulatory Flexibility Act Analysis provides information on the potential impacts of these reductions for each fishery. As for the recreational fishery, the effects of specific recreational management measures (*i.e.*, bag limits, size limits, and seasonal closures) will be described and analyzed in the action that implements those measures in 2017. The overall potential revenue reduction associated with the 2017 commercial quota reduction is approximately \$7.7 million. Catch limits must meet conservation objectives and satisfy applicable Magnuson-Stevens Act requirements to end overfishing and prevent fish stocks from becoming overfished, even if they result in negative economic impacts. The Council selected the ABC recommended by the SSC, which is the highest possible ABC allowed that will end overfishing. The Council based its recommendations for the 2017 and 2018 summer flounder catch limits on the advice of its SSC, which, as explained further in response to previous comments, represents the best scientific information available.

Comment 9: One commenter encouraged NMFS to hold more meetings in different areas so that more fishermen could participate.

Response: The public had the opportunity to provide comments during the development of the 2017 and 2018 catch limits at the following meetings:

- Summer Flounder, Scup, and Black Sea Bass Monitoring Committee Meeting; July 25, 2016 (webinar);
- Summer Flounder, Scup, and Black Sea Bass Advisory Panel Meetings; July 29, 2016 (webinar);
- Joint Council and Commission meeting to develop 2017 and 2018 catch limit recommendations; August 9, 2016 (Virginia Beach, VA).

Additionally, there have been opportunities to comment on the development of 2017 recreational management measures at the following meetings:

- Summer Flounder, Scup, and Black Sea Bass Monitoring Committee Meetings; November 9-10, 2016 (Baltimore, MD);
- Summer Flounder, Scup, and Black Sea Bass Advisory Panel Meeting; November 17, 2016 (webinar);
- Joint Council and Commission meeting to develop 2017 recreational management measure recommendations; December 12-15, 2016 (Baltimore, MD).

These meetings are scheduled by the Council, which is responsible for the development of catch recommendations to NMFS. Council-related meetings are generally held annually at similar dates and are accessible through webinar. NMFS encourages interested parties to check the Council's website for information on how to access upcoming meetings (<http://www.mafmc.org>).

Furthermore, the measures of this rule have been subject to public comment through proposed rulemaking, as required under the Administrative Procedure Act.

Comment 10: A few commenters noted frustration that overfishing did not occur in their

states, either recreationally or commercially, and questioned why fishermen from that state are being punished for overfishing that occurred in other states.

Response: In the case of summer flounder, overfishing is not the result of states exceeding individual commercial quotas or recreational targets, but rather results from the coastwide sector allocations being set at a level that is not sustainable for the stock overall. Based on the retrospective patterns in the assessment that have continually underestimated previous years' fishing mortality and overestimated stock size and recruitment, catch limits have been set at optimistic, higher levels. While catch has largely stayed within these levels, further evaluation indicates that the catch limits themselves for prior years, including 2016 and those previously established for 2017 and 2018, were set too high and overfishing and stock depletion continued as a result. This is why the SSC recommended a substantial reduction for 2017 and 2018 to adjust for and correct this persistent catch setting error and to end the cycle of overfishing. NMFS agrees with the Council's recommendation based on the ABC advice of its SSC and we are implementing the revised, lower ABCs outlined in the preamble as a result.

Comment 11: Numerous commenters implied that the summer flounder management measures are partial to the commercial industry. One issue of particular concern raised by commenters is that the commercial minimum size limit is smaller than those established for the recreational sector. Additionally, some stated the catch limits were allocated unfairly and the commercial fishery's landings limits should be reduced. Many commented that the commercial fishing industry is negatively affecting the resource more than the recreational sector, particularly with respect to discarding. Many suggestions on commercial management measures were suggested (*e.g.*, prohibit commercial fishing within 10 miles of the coastline, limit the

amount of commercial fishing allowed in the winter months around summer flounder spawning grounds, *etc.*).

Response: The Council evaluated the available fishery performance data and decided not to recommend adjusting the commercial minimum summer flounder size or other commercial fishery measures as part of the 2017 and 2018 specifications revision. Because NMFS' authority is to approve, partially approve, or disapprove Council-recommended measures, the commenters' suggestions for changes to the commercial fishery are outside the scope of this action. The Council can consider annual changes to several management measures, including commercial minimum fish size, during its specification setting process that typically occurs at the August meeting. NMFS encourages those with concerns about the commercial fishery voice those issues directly to the Council during the appropriate specifications development cycle in 2017. The Council, working with the Commission, is currently developing a summer flounder amendment that is potentially reviewing state-by-state commercial and sector allocations. NMFS encourages commenters to stay involved with the Council process during this amendment's development. Other management measures, such as seasonal closures or prohibiting fishing within certain areas, must also be considered through Council and Commission actions and are outside the scope of this action.

Comment 12: One commenter mentioned the need for more enforcement, stating that too many people are keeping undersized fish or exceeding their bag limits.

Response: NMFS agrees that adequate enforcement is essential to help ensure catch limits are effective and we will continue to work closely with our state partners under our joint

enforcement agreements. NMFS encourages people to call the NMFS Office of Law Enforcement's hotline at (800) 853-1964 if they witness illegal fishing activity.

Comment 13: One commenter suggested that observer data be reviewed and the specifications should be updated appropriately following that review.

Response: The commercial discard estimates using observer data are included in the annual stock assessment updates that are utilized in deriving OFL recommendations; therefore, observer data have already been reviewed and incorporated into these specifications.

Comment 14: Four commenters mentioned concerns over the impact of foreign fishing in US waters and its impact on the summer flounder stock.

Response: NMFS agrees that it is important to minimize the impact of foreign fishing vessels in the US Exclusive Economic Zone (EEZ), which is why Congress enacted the Magnuson-Stevens Act in 1976. The Magnuson-Stevens Act prohibited foreign fishing within the EEZ, except under special circumstances. There is currently no impact from foreign fishing on summer flounder within the EEZ.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that this final rule is necessary for the conservation and management of the summer flounder fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of effectiveness period for this rule, to ensure that the final specifications are in place on January 1, 2017. This action establishes the final specifications

(i.e., annual catch limits) for the summer flounder and the final commercial quota for the black sea bass fishery for the 2017 fishing year, which begins on January 1, 2017.

This rule is being issued at the earliest possible date. Preparation of the proposed rule by NMFS was dependent on the submission of the SEA/IRFA in support of the specifications that is developed by the Council. A complete document was received by NMFS in mid-October 2016. Documentation in support of the Council's recommended specifications is required for NMFS to provide the public with information from the environmental and economic analyses, as required for rulemaking, and to evaluate the consistency of the Council's recommendation with the Magnuson-Stevens Act and other applicable law. The proposed rule published on November 15, 2016, with a 15-day comment period ending November 30, 2016. Publication of the summer flounder specification at the start of the fishing year that begins January 1 of each fishing year, is required by the order of Judge Robert Doumar in *North Carolina Fisheries Association v. Daley*. Although there are currently established 2017 commercial and recreational catch limits for summer flounder, fishing at these levels would result in overfishing of the stock. The existing catch limits need to be replaced by the catch limits implemented through this action, which represent a necessary 30-percent reduction.

If the 30-day delay in effectiveness is not waived, the catch limit currently in place for the summer flounder fishery on January 1, 2017, will be too high, will be inconsistent with the prevailing scientific advice, and will perpetuate overfishing on the stock in a period of consistently poor recruitment, representing a substantial risk to the stock. Allowing fishing at this level is inconsistent with the Magnuson-Stevens Act, National Standard 1, and National Standard 2. The summer flounder fishery is expected, based on historic participation and harvest

patterns, to be very active at the start of the fishing season in 2017. Without these revised specifications in place on January 1, 2017, individual states will not be held to the reduced catch limits and will be unable to set appropriate commercial possession and/or trip limits, which apportion the catch over the entirety of the calendar year. Disproportionately large harvest occurring within the first weeks of 2017 would disadvantage some gear sectors or owners and operators of smaller vessels that typically fish later in the fishing season. It is reasonable to conclude that the commercial fishing fleet possesses sufficient capacity to exceed the established commercial quota for summer flounder before the regulations would become effective, should these updated specifications not be in place on January 1, 2017. Should this occur, the fishing mortality objectives for summer flounder would be compromised, thus undermining the intent of the rule. Additionally, if states are unable to constrain harvest within these revised specifications at the start of the fishing year, resulting in overages in the total 2017 catch limits, these overages will count against the 2018 fishing year limits, further impacting the fishing fleet. Similarly, the commercial fishing fleet could potentially exceed the revised commercial black sea bass catch limit before these specifications would be effective, if not in place by January 1, 2017. To ensure the effectiveness of this required accountability measure, the black sea bass catch limit revision must also be in place before the start of the fishing year. For all of these reasons, a 30-day delay in effectiveness would be contrary to the public interest. Therefore, NMFS is waiving the requirement to ensure the revised summer flounder specifications are in place on January 1, 2017.

These specifications are exempt from the procedures of Executive Order 12866.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

A FRFA was prepared pursuant to 5 U.S.C. 604(a), and incorporates the IRFA, a summary of any significant issues raised by the public comments in response to the IRFA and NMFS's responses to those comments, and a summary of the analyses completed to support the action. A copy of the EA/IRFA is available from the Council (see **ADDRESSES**).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

Final Regulatory Flexibility Analysis

A Summary of Significant Issues Raised by the Public in Response to the Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result

Our responses to all of the comments received on the proposed rule, including those that raised significant issues with the proposed action, can be found in the Comments and Responses section of this rule. None of the comments received raised specific issues regarding the economic analyses summarized in the IRFA. As outlined in Comment 9, commenters were generally concerned with the impacts of a 30-percent reduction on the fishing industry and shoreside businesses. Most comments were focused on the recreational fishery. Our response to those comments are not repeated here. No changes to the proposed rule were required to be made as a result of public comments.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

On December 29, 2015, NMFS issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry and \$7 million in annual gross receipts for all businesses primarily

engaged in for-hire fishing activity (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal permit for summer flounder, as well as owners of vessels that fish for summer flounder in state waters. The Council estimates that the 2017 and 2018 summer flounder specifications could affect 958 small entities and six large entities, assuming average revenues for the 2013-2015 period.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps the Agency has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes

Specification of commercial quotas and possession limits is constrained by the conservation objectives set forth in the FMP and implemented at 50 CFR part 648 under the authority of the Magnuson-Stevens Act. Economic impacts of changes in year-to-year quota specifications may be offset by adjustments to such measures as commercial fish sizes, changes to mesh sizes, gear restrictions, or possession and trip limits that may increase efficiency or value of the fishery. The Council recommended no such management measure changes, so none are implemented in this final rule. Therefore, the economic impact analysis of the action is

evaluated on the different levels of quota specified in the alternatives. The ability of NMFS to minimize economic impacts for this action is constrained by quota levels that provide the maximum availability of fish while still ensuring that the required objectives and directives of the FMP, its implementing regulations, and the Magnuson-Stevens Act are met. In particular, the Council's SSC has made recommendations for the 2017 and 2018 ABC level for the summer flounder stock designed to end overfishing and foster stock growth. NMFS considers these recommendations to be consistent with National Standard 2 of the Magnuson-Stevens Act, which requires that the best available scientific information be used in fishery decision making. This action sets commercial quotas and recreational harvest limits for the summer flounder fishery for the 2017 and 2018 fishing years that achieve the objectives outlined in the preamble of this rule. The landings limits for 2017 include a commercial quota of 5.66 million lb (2,567 mt) and a recreational harvest limit of 3.77 million lb (1,711 mt). For 2018, the measures include an initial commercial quota of 6.63 million lb (3,006 mt) and a recreational harvest limit of 4.42 million lb (2,004 mt).

The only other alternatives considered were the status quo alternatives that are identical to the summer flounder landings limits implemented in December 2015 (*i.e.*, the previously implemented 2017 and 2018 levels). If these specifications remained in place, they would have greater positive socioeconomic impacts than the preferred alternatives. However, these alternatives were not selected as preferred, as they do not address the new scientific information regarding summer flounder stock status, and, therefore, would likely result in overfishing, which would be inconsistent with the FMP, National Standard 1 guidance under the Magnuson-Stevens Act, and the most recent advice of the Council's SSC. Because these alternatives are

inconsistent with the purpose and need of this action, they are not considered further under this analysis.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules.

As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Federal permits issued for the summer flounder, scup, and black sea bass fisheries. In addition, copies of this final rule and guide (*i.e.*, permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following website: <http://www.greateratlantic.fisheries.noaa.gov>.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 19, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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